

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
MISTY TRUCKING LLC) Docket No. FIFRA-07-2002-0100
)
RESPONDENT) CONSENT AGREEMENT AND
) FINAL ORDER

PRELIMINARY STATEMENT

This proceeding for the assessment of civil penalties was initiated on or about March 28, 2002, pursuant to Section 14 of the federal Insecticide, Fungicide, and Rodenticide Act (hereinafter called FIFRA), 7 U.S.C. Section 136L, when the United States Environmental Protection Agency (hereinafter referred to as "Complainant") issued a "Complaint and Notice of Opportunity for Hearing" to Misty Trucking LLC, (hereinafter referred to as "Respondent").

The Complaint charged Respondent with violating Sections 12(a)(1)(E), and 12(a)(2)(L) of FIFRA, 7 U.S.C. Sections 136j(a)(1)(E).

Subsequently, Complainant and Respondent entered into negotiations in an attempt to resolve the Complaint. The Consent Agreement and Final Order set forth herein below is the result of these negotiations and represents settlement of this Complaint.

CONSENT AGREEMENT

It is hereby agreed, and accepted by Respondent, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of, and release from all FIFRA civil penalties that might have attached as a result of the allegations in the Complaint. Respondent has read the Consent Agreement, finds it reasonable and consents to the issuance and its terms and explicitly waives its right to request a hearing on the Complaint, this Agreement, or the attached Final Order.

2. Respondent admits the jurisdictional allegations of the Complaint and admits the facts stipulated in this Consent Agreement.

3. Respondent neither admits nor denies the violations of FIFRA as set forth in the

Complaint.

4. Respondent certifies that by signing this Consent Agreement and Final Order that to its knowledge it is presently in compliance with FIFRA, 7 U.S.C. 136 et seq., and all regulations promulgated thereunder.

5. Nothing in this Consent Agreement shall be construed as a release from, or to insulate Respondent from, any other action under any law and/or regulation administered by the U.S. Environmental Protection Agency.

6. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection.

7. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement.

8. Each signatory of this Agreement certifies that he or she is fully authorized to enter into terms of this Consent Agreement and Final Order.

9. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in paragraph 2 of this Final Order.

FINAL ORDER

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. Section 136l, and upon information contained in this Consent Agreement of the parties herein, IT IS HEREBY ORDERED THAT:


1. Respondent in settlement of the allegations set forth in this Complaint, shall pay by cashier's or certified check, a civil penalty, for the violations cited herein, in the amount of Three Thousand and Eighty Dollars (\$3,080.00), payable to the "Treasurer, United States of America" and such check shall be mailed to: U.S. EPA-Region VII (Regional Hearing Clerk), c/o of Mellon Bank, P.O. Box 360748M, Pittsburgh, Pennsylvania 15251. The payment shall be identified as In the Matter of Misty Trucking LLC. A copy of the check shall be forwarded to Rupert G. Thomas, Office of Regional Counsel, Region VII, EPA, 901 North 5th Street, Kansas City, Kansas 66101.

2. The payment of \$3,080.00 may be paid in full on or before 30 days after the effective date of the Final Order (the date by which the payment must be received shall hereafter be referred to as the "due date"), or the payment shall be paid in three installments. The first installment of \$1,080.00 shall be paid on or before 30 days after the effective date of the Final Order. The second installment of \$1,000.00 shall be paid on or before September 30, 2002.

The third installment of \$1,000.00 shall be paid on or before December 31, 2002. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer. If Respondent failed to pay any of the installment on or before the due date, the entire balance outstanding will be immediately due.


3. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. Section 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

By: 
Rupert G. Thomas
Attorney
Office of Regional Counsel

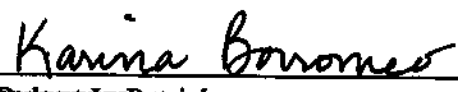
Date: 6/21/02

RESPONDENT:
MISTY TRUCKING LLC

By: 
Title: Solo Member

Date: 6/17/02

IT IS SO ORDERED. This Order become effective immediately.


~~Robert X. Patrick~~ KARINA BORROMEO
Regional Judicial Officer
Region VII

Date: July 1, 2002

IN THE MATTER OF Misty Trucking LLC dba Midwest Mulch Manufacturing, Respondent
Docket No. FIFRA-07-2002-0100

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Rupert G. Thomas
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by facsimile and
U.S. Certified Mail,
Return Receipt Requested, to:

C. Rex Phillips
10600 East 350 Highway
Raytown, Missouri 64138

Dated: 7/1/02


Kathy Robinson
Regional Hearing Clerk